

## REMARKS

After entry of this Amendment, the pending claim is claim 25. The Final Office Action dated April 24, 2009 has been carefully considered. Claims 16-18, 26, 27 and 32 have been canceled. Claims 1-15, 19-24 and 28-31 were previously canceled. Per the Examiner Interview held on June 25, 2009 between Examiner Merene and the Undersigned, claim 25 has been amended to overcome the pending rejections. Support for the amendments to claim 25 can be found throughout the Specification and Drawings and specifically in paragraph Nos. 35-38 and Fig. Nos. 1-3 and 5. Accordingly no new matter has been added. Reconsideration and allowance of the pending claim in view of the above Amendments and the following remarks is respectfully requested.

In the Final Office Action dated April 24, 2009, the Examiner:

- rejected claims 16-18, 25-27 and 32 under 35 U.S.C. 101;
- rejected claims 16-18, 25-27 and 32 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention;
- rejected claims 16 and 17 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,616,695 to Crozet *et al.* ("Crozet");
- rejected claims 16 and 17 under 35 U.S.C. 103(a) as being unpatentable over Crozet in view of U.S. Patent No. 6,193,755 to Metz-Stavenhagen *et al.* ("Metz");

- rejected claims 16, 17, 25, 26 and 32 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,776,198 to Rabbe *et al.* (“Rabbe”) in view of U.S. Patent No. 6,866,682 to An *et al.* in further view of U.S. Patent No. 4,599,086 to Doty (“Doty”); and
- rejected claims 18 and 27 under 35 U.S.C. 103(a) as being unpatentable over Rabbe in view of An in further view of Doty in further view of U.S. Patent No. 4,599,086 to Merlin (“Merlin”).

### **35 U.S.C. 101 REJECTION**

Claims 16-18, 25-27 and 32 were rejected under 35 U.S.C. 101 for reciting a process and a structure in the same claim. With respect to claims 16-18, 26, 27 and 32, which have been canceled, this rejection is moot. Applicants respectfully traverse this rejection with respect to claim 25, as amended.

Examiner Merene is thanked for the courtesy extended during the Examiner Interview held on June 25, 2009. Per our discussion, independent claim 25 has been amended to recite “[a] method of implanting an intervertebral implant into an intervertebral disc space between upper and lower vertebrae; the method comprising the steps of: a) providing an intervertebral implant including ....” As such, it is believed that this rejection has been overcome. Withdrawal of this rejection is respectfully requested.

### **35 U.S.C. 112 REJECTION**

Claims 16-18, 25-27 and 32 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. With respect to claims 16-18, 26, 27 and 32, which have been canceled, this rejection is moot. Applicants respectfully traverse this rejection with respect to claim 25, as amended.

Examiner Merene is thanked for the courtesy extended during the Examiner Interview held on June 25, 2009. Per our discussion, independent claim 25 has been amended to recite “[a] method of implanting an intervertebral implant into an intervertebral disc space between upper and lower vertebrae; the method comprising the steps of: a) providing an intervertebral implant including ....” As such, it is believed that this rejection has been overcome. Withdrawal of this rejection is respectfully requested.

### **INDEPENDENT CLAIMS 16 AND 32**

Independent claim 16 and claim 17, which is dependent therefrom, were rejected as being unpatentable over Crozet. In addition, independent claim 16 and claim 17, which is dependent therefrom, were rejected as being unpatentable over Crozet in view of Metz. Moreover, independent claim 16 and claim 17, which is dependent therefrom, were rejected as being unpatentable over Rabbe in view of An in further view of Doty. Furthermore claim 18, which is dependent from claim 16, was rejected as being unpatentable over Rabbe in view of An in further view of Doty in further view of Merlin.

Independent claim 32 was rejected as being unpatentable over Rabbe in view of An in further view of Doty.

Claims 16, 17, 18 and 32 have been canceled. As such these rejections are moot. Withdrawal of these rejections is respectfully requested.

### INDEPENDENT CLAIM 25

Independent claim 25 and claim 26, which is dependent therefrom, was rejected as being unpatentable over Rabbe in view of An in further view of Doty. In addition, dependent claim 27 has been rejected as being unpatentable over Rabbe in view of An in further view of Doty in further view of Merlin. With respect to claims 26 and 27, which have been canceled, these rejections are moot. Applicants respectfully traverse this rejection with respect to claim 25, as amended.

As amended, independent claim 25 is directed to a method of implanting an intervertebral implant into an intervertebral disc space between upper and lower vertebrae and recites, as follows:

a) providing an intervertebral implant including an intervertebral spacer body having an upper endface to contact at least a portion of the upper vertebra and a lower endface to contact at least a portion of the lower vertebra; a first end member including a plurality of spikes for engaging at least a portion of the upper vertebra and **one or more elastically deformable projections extending from an inner surface of an internal bore formed in the first end member**; and a second end member including a plurality of spikes for engaging at least a portion of the lower vertebra and **one or more elastically deformable projections extending from an inner surface of an internal bore formed in the second end member, each of the projections including a transversely extending lug for engaging the intervertebral spacer body**; b) providing access to the intervertebral disc space; c) inserting the intervertebral implant into the intervertebral disc

space such that the upper endface of the spacer body contacts at least a portion of the upper vertebra and the lower endface of the spacer body contacts at least a portion of the lower vertebra; d) slidably, non-rotatably moving the first and second end members with respect to the intervertebral spacer body between a second position wherein the plurality of spikes formed on the first and second end members do not extend beyond the upper and lower endfaces and a first position wherein the plurality of spikes formed on the first and second end members extend beyond the upper and lower endfaces and at least partially into engagement with the upper and lower vertebrae, respectively, **the projections being in contact with the inner surface of the internal bore when the first and second end members are in the second position so that the intervertebral spacer body can move past the projections; and e) securing the position of the first and second end members to the intervertebral spacer body in the first position via the projections moving out of contact with the inner surface of the internal bore formed in the first and second end members, respectively, and into engagement with the intervertebral spacer body when the first and second end members are in the first position.** (Emphasis Added).

Examiner Merene is thanked for the courtesy extended during the Examiner Interview held on June 25, 2009. Per our discussion, independent claim 25 has been amended to overcome the pending rejection.

Specifically, as discussed, Applicants respectfully submit that there is no disclosure, teaching, or suggestion in Rabbe, An or Doty, either alone or in combination, of a method of implanting an intervertebral implant into an intervertebral disc including the steps of providing an implant including an intervertebral spacer body, a first end member including one or more elastically deformable projections extending from an inner surface of an internal bore formed in the first end member, and a second end member including one or more elastically deformable projections extending from an inner surface of an internal bore formed in the second end member wherein each of the projections includes a transversely extending lug for engaging the intervertebral spacer body. The method further including slidably, non-rotatably moving the first

and second end members with respect to the intervertebral spacer body between a second position and a first position wherein the projections are in contact with the inner surface of the internal bore when the first and second end members are in the second position so that the intervertebral spacer body can move past the projections and the position of the first and second end members is secured to the intervertebral spacer body in the first position via the projections moving out of contact with the inner surface of the internal bore formed in the first and second end members, respectively, and into engagement with the intervertebral spacer body when the first and second end members are in the first position.

Therefore, it is respectfully submitted that amended claim 25 is allowable over Rabbe, An and Doty, either alone or in combination, for at least this reason. Withdrawal of this rejection and allowance of amended claim 25 is respectfully requested.

### **CONCLUSION**

Based upon the above-listed amendments and remarks, Applicants respectfully submit that the present application, including claim 25, is in condition for allowance and such action is respectfully requested.

No fee is believed due for this submission. If, however, the Commissioner determines otherwise, the Commissioner is authorized to charge any fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicant's attorney at the number listed below.

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Respectfully submitted,

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